

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
CHEMICAL PROCESSORS, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 80-161

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

THIS MATTER, the appeal of a \$250 civil penalty for emissions from fuel-burning equipment allegedly in violation of respondent's Section 9.09(b)(2) of Regulation I, came on for hearing on the 12th day of December, 1980, in Tacoma, Washington, and appellant Chemical Processors, Inc., represented by Mike Keller, and respondent Puget Sound Air Pollution Control Agency represented by its attorney Keith D. McGoffin, with William A. Harrison, Hearings Examiner, presiding, and having reviewed the proposed Order of the presiding officer mailed to the parties on the 7th day of January, 1981, and

1 more than twenty days having elapsed from said service; and

2 The Board having received no exceptions to said Proposed Order
3 and the Board being fully advised in the premises, NOW THEREFORE,

4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed
5 Order containing Findings of Fact, Conclusions of Law and Order dated
6 the 7th day of January, 1981, and incorporated by reference herein
7 and attached hereto as Exhibit A, are adopted and hereby entered as
8 the Board's Final Findings of Fact, Conclusions of Law and Order
9 herein.

10 DATED this 25th day of March, 1981.

11 POLLUTION CONTROL HEARINGS BOARD

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13 Max W. Washington
14 NAT W. WASHINGTON, Chairman

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16 David Akana
DAVID AKANA, Member

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18 Gayle Rothrock
19 GAYLE ROTHROCK, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

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POLLUTION CONTROL HEARINGS BOARD
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IN THE MATTER OF
CHEMICAL PROCESSORS, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 80-161

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a \$250 civil penalty for emissions from fuel-burning equipment allegedly in violation of respondent's Section 9.09(b)(2) of Regulation I, came on for hearing before the Pollution Control Hearings Board, Marianne Craft Norton, Member, convened at Tacoma, Washington, on December 12, 1980. Hearing Examiner William A. Harrison presided. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant appeared by its Operations Manager, Mike Keller.
Respondent appeared by its attorney, Keith D. McGoffin. Reporter

EXHIBIT A

1 Lloyd Holloway recorded the proceedings.

2 Witnesses were sworn and testified. Exhibits were examined. From
3 testimony heard and exhibits examined, the Pollution Control Hearings
4 Board makes these

5 FINDINGS OF FACT

6 I

7 Respondent, pursuant to RCW 43.21B.260 has filed with this Board a
8 certified copy of its Regulation I containing respondent's regulations
9 and amendments thereto of which official notice is taken.

10 II

11 Appellant, Chemical Processors, Inc., operates a plant for the
12 recycling of used oil into usable fuel. Appellant's boiler which
13 supplies heat for this process uses the end product as its fuel.
14 Under a routine arrangement respondent, Puget Sound Air Pollution
15 Control Agency (PSAPCA), proposed a date to perform a "source test" of
16 the boiler emissions to assure that these comply with law. This date
17 was June 5, 1980, and appellant was so informed by written notice some
18 two months in advance.

19 Prior to the June 5, 1980, date, the boiler developed a fuel
20 leakage problem requiring shutdown and maintenance including
21 cleaning. Appellant asked that the source test be delayed until June
22 13, 1980, because of this. PSAPCA honored the request.

23 On June 13, 1980, the boiler was still down when PSAPCA inspectors
24 arrived. It was then put in working order but appellant's boiler
25 operator requested a further delay of two days to clear from the

26 PROPOSED FINDINGS OF FACT
27 CONCLUSIONS OF LAW & ORDER

1 emission stream any fugitive ash particles loosened by the boiler's
2 cleaning. The PSAPCA inspector said that 10-15 minutes are enough for
3 these particles to clear, and conducted the source test after that
4 time had elapsed.

5 III

6 The undisputed process for source testing was that prescribed by
7 the Environmental Protection Agency Method No. 5, a technical
8 procedure prescribed by the federal government. Accordingly, three
9 tests were run, two in the morning and one in the afternoon. The
10 undisputed results were:

11 Morning Test 1: .185 Gr/scf, 12% CO₂

12 Morning Test 2: .180 Gr/scf, 12% CO₂

13 Afternoon Test 3: .312 Gr/scf, 12% CO₂

14 The demand for heat from appellant's boiler was reduced on the
15 afternoon of the day in question as it usually is under normal
16 operations. This caused the boiler to cycle on and off more
17 frequently, a factor which affects particulate content in the emission.

18 The maximum particulate emission allowed for equipment such as
19 appellant's boiler is .05 Gr/scf, 12% CO₂. Section 9.09(b)(2) of
20 respondent's Regulation I.

21 IV

22 Appellant later received a Notice and Order of Civil Penalty
23 citing Section 9.09(b)(2) and assessing a civil penalty of \$250. From
24 this, appellant appeals.

25
26 PROPOSED FINDINGS OF FACT
27 CONCLUSIONS OF LAW & ORDER

V

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to the following

CONCLUSION OF LAW

I

Respondent, PSAPCA has established a prima facie case by showing source test results in excess of the maximum particulate emission allowed. Against this appellant asserts that some of the particulate was fugitive ash resulting from a breakdown and cleaning procedure. Appellant advances, in support of its assertion, that the third test showed results markedly higher than the first two. We reject appellant's theory for two reasons. First, the high reading occurred during the test farthest from the beginning of boiler operations when there had been the maximum time to clear fugitive ash. Second, the lowered heat demand in the afternoon caused the boiler to cycle which is a more probable explanation of the difference in test results.

Appellant is not entitled in this case, to the protection of Section 9.16 relating to startup or periodic shutdown. Such protection would, of course, be available to appellant in a future case involving excessive emissions from those causes.

II

Appellant's boiler failed a similar source test conducted a year previous to this one. Further, the minimum test reading shows particulate emissions of three times what the Regulation allows. For these reasons the \$250 amount of penalty is justified.

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III

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The \$250 civil penalty, No. 4772, is hereby affirmed.

DONE at Lacey, Washington, this 7th day of January, 1981.

POLLUTION CONTROL HEARINGS BOARD

Marianne Craft Norton
MARIANNE CRAFT NORTON, Member